

## HOUSE BILL No. 1347

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10; IC 22-3-7-10; IC 36-8.

**Synopsis:** Public safety worker occupational diseases. Creates a presumption that an emergency services employee or a public safety employee who incurs death or disability from a health condition caused by hepatitis, meningococcal meningitis, or tuberculosis acquired while performing duties in the scope of the employee's employment and meets other requirements has incurred a death or disability in the line of duty.

**Effective:** July 1, 2002.

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**Alderman, Lawson L**

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January 15, 2002, read first time and referred to Committee on Labor and Employment.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## HOUSE BILL No. 1347

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-10-5.5-13.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13.5. (a) This section  
3 applies to participants whose disability occurred after June 30, 1987.

4 (b) Benefits provided under this section are subject to section 2.5 of  
5 this chapter.

6 (c) As used in this section, a disability is to be considered to have  
7 arisen in the line of duty if the disability is the direct result of:

8 (1) a personal injury that occurs while the participant is on duty;

9 or

10 (2) a personal injury that occurs while the participant is off duty  
11 and responding to an offense or an emergency or a reported  
12 offense or emergency;

13 **or if the disability is a presumed disability incurred in the line of**  
14 **duty under IC 5-10-13.**

15 (d) A participant whose disability arose in the line of duty is entitled  
16 to a monthly benefit equal to the participant's monthly salary on the  
17 date of disability multiplied by the degree of impairment (expressed as

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a percentage impairment of the person as a whole). However, the monthly benefit under this subsection must be at least:

- (1) twenty percent (20%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or
- (2) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

(e) A participant whose disability did not arise in the line of duty is entitled to a monthly benefit equal to one-half (1/2) of the participant's monthly salary on the date of disability multiplied by the degree of impairment (expressed as a percentage of the person as a whole). However, the monthly benefit under this subsection must be at least:

- (1) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or
- (2) five percent (5%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

SECTION 2. IC 5-10-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. As used in this chapter, "dies in the line of duty" refers to a death that occurs as a direct result of personal injury or illness resulting from any action that the public safety officer, in the public safety officer's capacity as a public safety officer, is obligated or authorized by rule, regulation, condition of employment or service, or law to perform in the course of controlling or reducing crime or enforcing the criminal law. **For purposes of a public safety officer who is an employee (as defined in IC 5-10-13-2), the term includes a presumed death incurred in the line of duty under IC 5-10-13.**

SECTION 3. IC 5-10-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

**Chapter 13. Emergency and Public Safety Employee Presumed Death and Disability**

**Sec. 1. As used in this chapter, "communicable disease" refers to:**

- (1) hepatitis;
- (2) meningococcal meningitis; and
- (3) tuberculosis.

**Sec. 2. As used in this chapter, "employee" means an individual who:**

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(1) is employed full time by the state or a political subdivision of the state as:

(A) a member of a fire department (as defined in IC 36-8-1-8);

(B) an emergency medical services provider (as defined in IC 16-41-10-1);

(C) a member of a police department (as defined in IC 36-8-1-9);

(D) a correctional officer (as defined in IC 5-10-10-1.5);

(E) a state police officer;

(F) a county police officer;

(G) a county sheriff;

(H) an excise police officer;

(I) a conservation enforcement officer;

(J) a town marshal; or

(K) a deputy town marshal;

(2) in the course of the individual's employment is at high risk for occupational exposure to a communicable disease; and

(3) is not employed elsewhere in a similar capacity.

Sec. 3. As used in this chapter, "high risk for occupational exposure" means that risk is incurred by an individual in performing the basic duties of the individual's employment, including:

(1) providing emergency medical treatment in a nonhealth care setting where there is a potential for transfer of body fluids between individuals;

(2) working at the scene of an accident, a fire, or other rescue or public safety operation or in an emergency rescue vehicle or public safety vehicle during which the individual has contact with body fluids, containers of body fluids, hypodermic needles, or other materials that have been exposed to body fluids;

(3) engaging in the pursuit, apprehension, and arrest of law violators or suspected law violators during which the individual may be exposed to body fluids; or

(4) maintaining custody and physical restraint of prisoners or inmates of a prison, a jail, or other criminal detention facility during which the individual may be exposed to body fluids.

Sec. 4. As used in this chapter, "political subdivision" has the meaning set forth in IC 6-3.5-2-1.

Sec. 5. (a) Except as provided in section 6 of this chapter, an employee who:



(1) is diagnosed with a health condition caused by a communicable disease that:

(A) requires medical treatment; and

(B) results in total or partial disability or death;

(2) by written affidavit has provided to the employee's employer a verification described in subsection (b), (c), or (d); and

(3) before the employee is diagnosed with a health condition caused by hepatitis or tuberculosis, tests negative for evidence of hepatitis or tuberculosis through medical testing;

is presumed to have a disability or death incurred in the line of duty.

(b) An employee who is diagnosed with a health condition caused by hepatitis and, if the health condition results in disability or death, wishes to have a presumption of disability or death incurred in the line of duty apply to the employee shall, by written affidavit, provide verification that the employee has not:

(1) outside the scope of the employee's current employment, been exposed through transfer of body fluids to an individual known to have a medical condition caused by hepatitis;

(2) received blood products other than a transfusion received because of an injury to the employee that occurred in the scope of the employee's current employment;

(3) received blood products for the treatment of a coagulation disorder since testing negative for hepatitis;

(4) engaged in sexual practices or other behavior identified as high risk by the Centers for Disease Control and Prevention or the Surgeon General of the United States;

(5) had sexual relations with another individual known to the employee to have engaged in sexual practices or other behavior described in subdivision (4); or

(6) used intravenous drugs that were not prescribed by a physician.

(c) An employee who is diagnosed with a health condition caused by meningococcal meningitis and, if the health condition results in disability or death, wishes to have a presumption of disability or death incurred in the line of duty apply to the employee shall, by written affidavit, provide verification that the employee, in the ten (10) days immediately preceding the diagnosis, was not exposed to another individual known to:

(1) have meningococcal meningitis; or

(2) be an asymptomatic carrier of meningococcal meningitis;

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outside the scope of the employee's current employment.

(d) An employee who is diagnosed with a health condition caused by tuberculosis and, if the health condition results in disability or death, wishes to have a presumption of disability or death incurred in the line of duty apply to the employee shall, by written affidavit, provide verification that the employee has not, outside the scope of the employee's current employment, been exposed to another individual known to have tuberculosis.

(e) A presumption of disability or death incurred in the line of duty may be rebutted by competent evidence.

Sec. 6. If a standard, medically recognized vaccine or other measure exists for the prevention of a communicable disease and the vaccine or other measure is medically indicated for an employee according to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, the following apply:

(1) If:

(A) the employee receives the vaccine or other measure as required by the employee's employer; or

(B) the employee's physician provides written notice to the employer that the vaccine or other measure would pose a significant risk to the employee's health;

and the employee meets the other requirements of this chapter, a presumption of disability or death incurred in the line of duty under this chapter applies to the employee.

(2) If:

(A) the employee does not receive the vaccine or other measure as required by the employee's employer; and

(B) the employee's physician has not provided written notice that the vaccine or other measure would pose a significant risk to the employee's health;

a presumption of disability or death incurred in the line of duty under this chapter does not apply to the employee.

Sec. 7. (a) The employer of an employee shall:

(1) maintain a record of a known or reasonably suspected exposure of the employee to a communicable disease; and

(2) immediately notify the employee of the exposure.

(b) An employee shall file a report with the employee's employer of each known or reasonably suspected exposure to a communicable disease in the scope of the employee's employment.

Sec. 8. (a) The state or a political subdivision of the state may provide, in the life and disability insurance that covers employees

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of the state or political subdivision, accidental death coverage or double indemnity coverage for a health condition caused by a communicable disease that results in total or partial disability or death that is presumed to be a disability or death incurred in the line of duty under this chapter.

(b) This chapter does not require an insurer that issues a noncompulsory life insurance policy or a noncompulsory disability insurance policy to include in the policy coverage for a disability or death incurred in the line of duty as described in this chapter.

Sec. 9. This chapter does not affect the requirements for determining eligibility for disability benefits provided by the state or a political subdivision of the state except to the extent of determining whether an employee incurred a disability in the line of duty.

SECTION 4. IC 22-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) As used in this chapter, "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section. **The term includes a health condition caused by a communicable disease of a correctional officer (as defined in IC 5-10-10-1.5) who is presumed to have a disability or death incurred in the line of duty under IC 5-10-13.**

(b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

SECTION 5. IC 36-8-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) A city shall pay for the care of a police officer or firefighter who suffers an injury while performing



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1 ~~his the person's~~ duty or contracts illness caused by the performance of  
 2 ~~his the person's~~ duty, **including an injury or illness that results in**  
 3 **a presumed disability or death incurred in the line of duty under**  
 4 **IC 5-10-13.** This care includes:

- 5 (1) medical and surgical care;
- 6 (2) medicines and laboratory, curative, and palliative agents and
- 7 means;
- 8 (3) X-ray, diagnostic, and therapeutic service, including during
- 9 the recovery period; and
- 10 (4) hospital and special nursing care if the physician or surgeon
- 11 in charge considers it necessary for proper recovery.

12 (b) Expenditures required by subsection (a) shall be paid from the  
 13 general fund of the city.

14 (c) A city that has paid for the care of a police officer or firefighter  
 15 under subsection (a) has a cause of action for reimbursement of the  
 16 amount paid under subsection (a) against any third party against whom  
 17 the police officer or firefighter has a cause of action for an injury  
 18 sustained because of or an illness caused by the third party. The city's  
 19 cause of action under this subsection is in addition to, and not in lieu  
 20 of, the cause of action of the police officer or firefighter against the  
 21 third party.

22 SECTION 6. IC 36-8-6-8, AS AMENDED BY P.L.118-2000,  
 23 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2002]: Sec. 8. (a) For a member who became disabled before  
 25 July 1, 2000, the 1925 fund shall be used to pay a pension in a sum  
 26 determined by the local board, but not exceeding:

- 27 (1) for a disability or disease occurring before July 1, 1982, fifty
- 28 percent (50%); and
- 29 (2) for a disability or disease occurring after June 30, 1982,
- 30 fifty-five percent (55%);

31 of the salary of a first class patrolman, to a member of the police  
 32 department who has suffered or contracted a mental or physical disease  
 33 or disability that renders ~~him the~~ **patrolman** unable to perform the  
 34 essential functions of any duty in the police department, considering  
 35 reasonable accommodation to the extent required by the Americans  
 36 with Disabilities Act. If a member who becomes eligible for a disability  
 37 pension has more than twenty (20) years of service, ~~he the member~~ is  
 38 entitled to receive a disability pension equal to the pension ~~he the~~ **member**  
 39 **member** would have received if ~~he the member~~ had retired on the date  
 40 of the disability.

41 (b) Except as otherwise provided in this subsection, for a member  
 42 who becomes disabled after June 30, 2000, the 1925 fund shall be used



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to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); ~~or~~

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); **or**

**(C) a presumed disability incurred in the line of duty under IC 5-10-13; and**

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or

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1 contracted a mental or physical disease or disability:

2 (1) that is not described in subsection (b)(1); and

3 (2) that renders the member unable to perform the essential  
4 functions of any duty in the police department, considering  
5 reasonable accommodation to the extent required by the  
6 Americans with Disabilities Act.

7 If a member who becomes eligible for a disability pension has more  
8 than twenty (20) years of service, the member is entitled to receive a  
9 disability pension equal to the pension the member would have  
10 received if the member had retired on the date of the disability.

11 (d) The member must have retired from active service after a  
12 physical examination by the police surgeon or another surgeon  
13 appointed by the local board. The disability must be determined solely  
14 by the local board after the examination and a hearing conducted under  
15 IC 36-8-8-12.7. A member shall be retained on active duty with full pay  
16 until ~~he~~ **the member** is retired by the local board because of the  
17 disability.

18 (e) After a member has been retired upon pension, the local board  
19 may, at any time, require the retired member to again be examined by  
20 the police surgeon or another surgeon appointed by the local board.  
21 After the examination the local board shall conduct a hearing under  
22 IC 36-8-8-12.7 to determine whether the disability still exists and  
23 whether the retired member should remain on the pension roll. The  
24 retired member shall be retained on the pension roll until reinstated in  
25 the service of the police department, except in case of resignation. If  
26 after the examination and hearing the retired member is found to have  
27 recovered from ~~his~~ **the member's** disability and to be again fit for  
28 active duty, then the member shall be put on active duty with full pay  
29 and from that time is no longer entitled to payments from the 1925  
30 fund. If the member fails or refuses to return to active duty, ~~he~~ **the**  
31 **member** waives all rights to further benefits from the 1925 fund.

32 (f) If the salary of a first class patrolman is increased or decreased,  
33 the pension payable shall be proportionately increased or decreased.  
34 However, the monthly pension payable to a member or survivor may  
35 not be reduced below:

36 (1) the amount of the first full monthly pension received by that  
37 person; or

38 (2) fifty-five percent (55%) of the salary of a first class patrolman;  
39 whichever is greater.

40 (g) Time spent receiving disability benefits is considered active  
41 service for the purpose of determining retirement benefits until the  
42 member has a total of twenty (20) years of service.

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1 (h) A fund member who is receiving disability benefits under this  
 2 chapter shall be transferred from disability to regular retirement status  
 3 when the member becomes fifty-five (55) years of age.

4 SECTION 7. IC 36-8-6-10.1, AS AMENDED BY P.L.118-2000,  
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2002]: Sec. 10.1. (a) This section applies to a member who  
 7 dies in the line of duty after August 31, 1982.

8 (b) The surviving spouse is entitled to a monthly benefit, during the  
 9 spouse's lifetime, equal to the benefit to which the member would have  
 10 been entitled on the date of the member's death, but no less than fifty  
 11 percent (50%) of the monthly wage received by a first class patrolman.  
 12 If the surviving spouse remarried before September 1, 1983, and  
 13 benefits ceased on the date of remarriage, the benefits for the surviving  
 14 spouse shall be reinstated on July 1, 1997, and continue during the life  
 15 of the surviving spouse.

16 (c) A payment shall also be made to each child of a deceased  
 17 member less than eighteen (18) years of age, in an amount fixed by  
 18 ordinance, but at least an amount equal to twenty percent (20%) of the  
 19 monthly pay of a first class patrolman per month to each child:

- 20 (1) until the child becomes eighteen (18) years of age;
- 21 (2) until the child becomes twenty-three (23) years of age if the
- 22 child is enrolled in and regularly attending a secondary school or
- 23 is a full-time student at an accredited college or university; or
- 24 (3) during the entire period of the child's physical or mental
- 25 disability;

26 whichever period is longer.

27 (d) The surviving children of the deceased member who are eligible  
 28 to receive a benefit under subsection (c) may receive an additional  
 29 benefit in an amount fixed by ordinance, but the total additional benefit  
 30 under this subsection to all the member's children may not exceed a  
 31 total of thirty percent (30%) of the monthly wage received by a first  
 32 class patrolman. However, this limitation does not apply to the children  
 33 of a member who are physically or mentally disabled.

34 (e) If a deceased member leaves no surviving spouse and no child  
 35 who qualifies for benefits under subsection (c) but does leave a  
 36 dependent parent or parents, an amount equal to twenty percent (20%)  
 37 of the monthly pay of a first class patrolman per month from the time  
 38 of the member's death shall be paid to the dependent parent or parents  
 39 during their dependency. When both parents survive, the total amount  
 40 is still twenty percent (20%), to be paid to them jointly. In all cases of  
 41 payment to a dependent relative of a deceased member, the board is the  
 42 final judge of the question of necessity and dependency and of the

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1 amount to be paid. The board may also reduce or terminate temporarily  
 2 or permanently a payment to a dependent relative of a deceased  
 3 member when it determines that the condition of the fund or other  
 4 circumstances make this action necessary.

5 (f) If the salary of a first class patrolman is increased or decreased,  
 6 the pension payable under this section shall be proportionately  
 7 increased or decreased. However, the monthly pension payable to a  
 8 member or survivor may not be reduced below the amount of the first  
 9 full monthly pension received by that person.

10 (g) For purposes of this section, "dies in the line of duty" means  
 11 death that occurs as a direct result of personal injury or illness resulting  
 12 from any action that the member in the member's capacity as a police  
 13 officer:

14 (1) is obligated or authorized by rule, regulation, condition of  
 15 employment or service, or law to perform; or

16 (2) performs in the course of controlling or reducing crime or  
 17 enforcing the criminal law.

18 **The term includes a presumed death incurred in the line of duty**  
 19 **under IC 5-10-13.**

20 SECTION 8. IC 36-8-7-11, AS AMENDED BY P.L.246-2001,  
 21 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2002]: Sec. 11. (a) Benefits paid under this section are subject  
 23 to section 2.5 of this chapter.

24 (b) If a member of the fire department becomes seventy (70) years  
 25 of age or is found upon examination by a medical officer to be  
 26 physically or mentally disabled and unable to perform the essential  
 27 functions of the job, considering reasonable accommodation to the  
 28 extent required by the Americans with Disabilities Act, so as to make  
 29 necessary ~~his~~ **the person's** retirement from all service with the  
 30 department, the local board shall retire the person.

31 (c) The local board may retire a person for disability only after a  
 32 hearing conducted under IC 36-8-8-12.7.

33 (d) If after the hearing the local board determines that a person who  
 34 became disabled before July 1, 2000, is disabled and unable to perform  
 35 the essential functions of the job, considering reasonable  
 36 accommodation to the extent required by the Americans with  
 37 Disabilities Act, the local board shall then authorize the monthly  
 38 payment to the person from the 1937 fund of an amount equal to  
 39 fifty-five percent (55%) of the salary of a fully paid first class  
 40 firefighter in the unit at the time of the payment of the pension. All  
 41 physical and mental examinations of members of the fire department  
 42 shall be made on order of the local board by a medical officer

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designated by the local board.

(e) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); ~~or~~

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); **or**

**(C) a presumed disability incurred in the line of duty under IC 5-10-13; and**

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is not a disability described in subsection

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1 (e)(1); and

2 (2) is unable to perform the essential functions of the job,  
3 considering reasonable accommodation to the extent required by  
4 the Americans with Disabilities Act;

5 the local board shall then authorize the monthly payment to the person  
6 from the 1937 fund of an amount equal to fifty-five percent (55%) of  
7 the salary of a fully paid first class firefighter in the unit at the time of  
8 the payment of the pension. All physical and mental examinations of  
9 members of the fire department shall be made on order of the local  
10 board by a medical officer designated by the local board.

11 SECTION 9. IC 36-8-7-12.4, AS ADDED BY P.L.118-2000,  
12 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2002]: Sec. 12.4. (a) This section applies to an active member  
14 who dies in the line of duty after August 31, 1982.

15 (b) If a member dies in the line of duty after August 31, 1982, the  
16 surviving spouse is entitled to a monthly benefit, during the spouse's  
17 lifetime, equal to the benefit to which the member would have been  
18 entitled on the date of the member's death, but not less than fifty  
19 percent (50%) of the monthly wage received by a fully paid first class  
20 firefighter. If the spouse remarried before September 1, 1983, and  
21 benefits ceased on the date of remarriage, the benefits for the surviving  
22 spouse shall be reinstated on July 1, 1997, and continue during the life  
23 of the surviving spouse. If the pension of the surviving spouse of a  
24 deceased member has ceased by virtue of the spouse's remarriage, and  
25 if the person to whom the spouse has remarried was a retired member  
26 of the fire department who was also entitled to a pension, then upon the  
27 death of the member to whom the spouse had remarried, the spouse is  
28 entitled to receive a pension as the surviving spouse of a deceased  
29 member as though the spouse had not been remarried.

30 (c) If a member dies while in active service, the member's children  
31 who are:

32 (1) less than eighteen (18) years of age; or

33 (2) less than twenty-three (23) years of age if the children are  
34 enrolled in and regularly attending a secondary school or are  
35 full-time students at an accredited college or university;

36 are each entitled to receive an amount fixed by ordinance but not less  
37 than twenty percent (20%) of the salary of a fully paid first class  
38 firefighter in the unit at the time of the payment of the pension.

39 (d) The surviving children of the deceased member who are eligible  
40 to receive a benefit under subsection (c) may receive an additional  
41 benefit in an amount fixed by ordinance, but the total additional benefit  
42 under this subsection to all the member's children may not exceed a

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total of thirty percent (30%) of the monthly wage received by a first class firefighter. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(e) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund. Each parent of a deceased member who was eligible for a pension under this subsection is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(f) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness resulting from any action that the member, in the member's capacity as a firefighter:

- (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (2) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

**The term includes a presumed death incurred in the line of duty under IC 5-10-13.**

(g) If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subsection (c)(2), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(h) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(i) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

SECTION 10. IC 36-8-7.5-13, AS AMENDED BY P.L.246-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) For a member who becomes disabled before July 1, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to:

- (1) fifty percent (50%) for a disease or disability occurring before

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July 1, 1991; and

(2) fifty-five percent (55%) for a disease or disability occurring after June 30, 1991;

of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(b) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered or contracted a mental or physical disease or disability that render the member permanently unfit for active duty in the police department, or to an active member of the police department who has been in active service for less than one (1) year who has suffered or received personal injury from violent external causes while in the actual discharge of ~~his~~ **the member's** duties as a police officer. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department.

(b) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); ~~or~~

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the

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1 exposure occasioned by the nature of the fund member's  
2 duties; and

3 (iii) the disease can be traced to the fund member's  
4 employment as the proximate cause); or

5 **(C) a presumed disability incurred in the line of duty under**  
6 **IC 5-10-13; and**

7 (2) is unable to perform the essential functions of the job,  
8 considering reasonable accommodation to the extent required by  
9 the Americans with Disabilities Act.

10 The pensions provided for in this subsection shall be paid only so long  
11 as the member of the police department remains unfit for active duty  
12 in the police department. If the salary of a first class patrolman is  
13 increased or decreased, the pension payable shall be proportionately  
14 increased or decreased. However, the monthly pension payable to a  
15 member or survivor may not be reduced below the amount of the first  
16 full monthly pension received by that person.

17 (c) For a member who becomes disabled after June 30, 2000, the  
18 1953 fund shall be used to pay a pension in an annual sum equal to  
19 fifty-five percent (55%) of the salary of a first class patrolman in the  
20 police department, computed on an annual basis and payable in twelve  
21 (12) equal monthly installments, to an active member of the police  
22 department who has been in active service for at least one (1) year and:

23 (1) has suffered or incurred a disability that:

24 (A) renders the member permanently unfit for active duty in  
25 the police department; and

26 (B) is not described in subsection (b)(1); and

27 (2) is unable to perform the essential functions of the job,  
28 considering reasonable accommodation to the extent required by  
29 the Americans with Disabilities Act.

30 The pension provided in this subsection shall be paid only so long as  
31 the member of the police department remains unfit for active duty in  
32 the police department. If the salary of a first class patrolman is  
33 increased or decreased, the pension payable shall be proportionately  
34 increased or decreased. However, the monthly pension payable to a  
35 member or survivor may not be reduced below the amount of the first  
36 full monthly pension received by that person.

37 (d) For a member who became disabled before July 1, 2000, the  
38 1953 fund shall be used to pay temporary benefits in an annual sum  
39 equal to thirty percent (30%) of the salary of a first class patrolman in  
40 the police department, computed and payable as prescribed by section  
41 12(a) of this chapter, to an active member of the police department who  
42 has been in active service for more than one (1) year and who has

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suffered any physical or mental disability that renders the member temporarily or permanently unable to perform his duties as a member of the police department, or to an active member of the police department who has been in active service for less than one (1) year and who has suffered or received personal injury from violent external causes while in the actual discharge of ~~his~~ **the member's** duties as a police officer, until the time the member is physically and mentally able to return to active service on the police department.

(e) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) suffers or incurs a disability that renders the member temporarily unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); ~~or~~

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); ~~or~~

**(C) a presumed disability incurred in the line of duty under IC 5-10-13; and**

(2) is unable to perform the essential functions of the job,

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1 considering reasonable accommodation to the extent required by  
2 the Americans with Disabilities Act.

3 The pension provided in this subsection shall be paid only so long as  
4 the member of the police department remains unfit for active duty in  
5 the police department. If the salary of a first class patrolman is  
6 increased or decreased, the pension payable shall be proportionately  
7 increased or decreased. However, the monthly pension payable to a  
8 member or survivor may not be reduced below the amount of the first  
9 full monthly pension received by that person.

10 (f) For a member who becomes disabled after June 30, 2000, the  
11 1953 fund shall be used to pay temporary benefits in an annual sum  
12 equal to thirty percent (30%) of the salary of a first class patrolman in  
13 the police department, computed on an annual basis and payable in  
14 twelve (12) equal monthly installments, to an active member of the  
15 police department:

16 (1) who has been in active service for at least one (1) year;

17 (2) suffers or incurs a disability that:

18 (A) renders the member temporarily unfit for active duty in the  
19 police department; and

20 (B) is not described in subsection (e)(1); and

21 (3) is unable to perform the essential functions of the job,  
22 considering reasonable accommodation to the extent required by  
23 the Americans with Disabilities Act.

24 The pension provided for in this subsection shall be paid only so long  
25 as the member of the police department remains unfit for active duty  
26 in the police department. If the salary of a first class patrolman is  
27 increased or decreased, the pension payable shall be proportionately  
28 increased or decreased. However, the monthly pension payable to a  
29 member or survivor may not be reduced below the amount of the first  
30 full monthly pension received by that person.

31 (g) If an application is made by an active member of the police  
32 department because of physical or mental disability for temporary  
33 benefits as provided in subsection (d), (e), or (f), the benefit is not  
34 payable until the local board determines after a hearing conducted  
35 under IC 36-8-8-12.7 that the member is unfit for active duty on the  
36 police department, considering reasonable accommodation to the  
37 extent required by the Americans with Disabilities Act. Before the  
38 hearing, a physician to be appointed by the local board shall examine  
39 the member and certify in writing whether in ~~his~~ **the physician's**  
40 opinion the member is unfit, physically or mentally, for active duty in  
41 the police department. After the pension or benefit has been granted by  
42 the local board, the payment commences with the original date of the

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injury or illness causing the disability.

(h) A member who has been granted a disability benefit under this section and who fails or refuses to submit to a physical examination at any time by the local board physician has no right in the future to receive the disability benefit, and any benefit that has been granted shall be immediately canceled by the local board.

(i) The local board may, from time to time, require a member of the police department who is receiving at any time disability benefits or pensions as provided in this section to be examined by the physician appointed by the local board. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the member should continue to receive the pension or benefit. If after the examination and hearing the member is found to have recovered from ~~his~~ **the member's** disability and is fit for active duty on the police department, then upon written notice to the member by the local board, the member shall be reinstated in active service, the safety board shall be informed of the action of the local board, and from that time the member is no longer entitled to payments from the 1953 fund. If the member fails or refuses to return to active duty after ordered by the local board, ~~he~~ **the member** ceases to be a member of the 1953 fund and waives all rights to any further pensions or benefits provided by the 1953 fund.

(j) Notwithstanding any other provision of this chapter, no disability benefit may be paid for any disability based upon or caused by any mental or physical condition that a member had at the time ~~he~~ **the member** entered or reentered ~~his~~ **the member's** active service in the police department.

(k) If a member who is receiving disability benefits under subsection (a), (b), or (c) for a disease or disability occurring after June 30, 1991, is transferred from disability to regular retirement status, the member's monthly pension may not be reduced below fifty-five percent (55%) of the salary of a first class patrolman at the time of payment of the pension.

(l) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

(m) A fund member who is receiving disability benefits under this chapter shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

SECTION 11. IC 36-8-7.5-14.1, AS AMENDED BY P.L.1-2001,



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SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14.1. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a first class patrolman. If the spouse remarried before September 1, 1983, benefits ceased on the date of remarriage. However, if a member of the police department dies in the line of duty after August 31, 1982, and the member's surviving spouse remarried before September 1, 1983, the benefits for the surviving spouse shall be reinstated on July 1, 1995, and continue during the life of the surviving spouse.

(c) The 1953 fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed as provided in section 12(b) of this chapter and payable in monthly installments, to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. However, the pension to the child ceases if the child marries or is legally adopted by any person.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total benefit to all the member's children under this subsection may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(e) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the 1953 fund shall be used to pay an annuity not greater than a sum equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed and payable as provided in section 12(b) of this chapter, payable

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1 monthly to the dependent parent or parents of a member of the police  
 2 department who dies from any cause while in the actual discharge of  
 3 duties as a police officer. The annuity continues for the remainder of  
 4 the life or lives of the parent or parents as long as either or both fail to  
 5 have sufficient other income for their proper care, maintenance, and  
 6 support.

7 (f) In all cases of payment to a dependent relative of a deceased  
 8 member, the local board is the final judge of the question of necessity  
 9 and dependency and of the amount within the stated limits to be paid.  
 10 The local board may also reduce or terminate temporarily or  
 11 permanently a payment to a dependent relative of a deceased member  
 12 when it determines that the condition of the 1953 fund or other  
 13 circumstances make this action necessary.

14 (g) If the salary of a first class patrolman is increased or decreased,  
 15 the pension payable under this section shall be proportionately  
 16 increased or decreased. However, the monthly pension payable to a  
 17 member or survivor may not be reduced below the amount of the first  
 18 full monthly pension received by that person.

19 (h) For purposes of this section, "dies in the line of duty" means  
 20 death that occurs as a direct result of personal injury or illness resulting  
 21 from any action that the member, in the member's capacity as a police  
 22 officer:

23 (1) is obligated or authorized by rule, regulation, condition of  
 24 employment or service, or law to perform; or

25 (2) performs in the course of controlling or reducing crime or  
 26 enforcing the criminal law.

27 **The term includes a presumed death incurred in the line of duty**  
 28 **under IC 5-10-13.**

29 SECTION 12. IC 36-8-8-12.5 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12.5. (a) This section  
 31 applies only to a fund member who:

32 (1) is hired for the first time after December 31, 1989;

33 (2) chooses coverage by this section and section 13.5 of this  
 34 chapter under section 12.4 of this chapter; or

35 (3) is described in section 12.3(c)(2) of this chapter.

36 (b) At the same hearing where the determination of whether the  
 37 fund member has a covered impairment is made, the local board shall  
 38 determine the following:

39 (1) Whether the fund member has a Class 1 impairment. A Class  
 40 1 impairment is a covered impairment that is the direct result of  
 41 one (1) or more of the following:

42 (A) A personal injury that occurs while the fund member is on

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duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

**(D) A health condition caused by a communicable disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.**

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(A) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(B) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(C) the disease can be traced to the fund member's employment as the proximate cause.

(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

SECTION 13. IC 36-8-8-14.1, AS AMENDED BY P.L.118-2000, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) This section applies to an active member who dies in the line of duty after August 31, 1982.

(c) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to a monthly benefit during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years service at fifty-two (52) years of age. If the spouse remarried before September

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1 1, 1983, and benefits ceased on the date of remarriage, the benefits for  
 2 the surviving spouse shall be reinstated on July 1, 1997, and continue  
 3 during the life of the surviving spouse.

4 (d) If a fund member dies in the line of duty, each of the member's  
 5 surviving children is entitled to a monthly benefit equal to twenty  
 6 percent (20%) of the fund member's monthly benefit:

7 (1) until the child reaches eighteen (18) years of age; or

8 (2) until the child reaches twenty-three (23) years of age if the  
 9 child is enrolled in and regularly attending a secondary school or  
 10 is a full-time student at an accredited college or university;

11 whichever period is longer. However, if the board finds upon the  
 12 submission of satisfactory proof that a child who is at least eighteen  
 13 (18) years of age is mentally or physically incapacitated, is not a ward  
 14 of the state, and is not receiving a benefit under subdivision (2), the  
 15 child is entitled to receive an amount each month that is equal to the  
 16 greater of thirty percent (30%) of the monthly pay of a first class  
 17 patrolman or first class firefighter or fifty-five percent (55%) of the  
 18 monthly benefit the deceased member was receiving or was entitled to  
 19 receive on the date of the member's death as long as the mental or  
 20 physical incapacity of the child continues. Benefits paid for a child  
 21 shall be paid to the surviving parent as long as the child resides with  
 22 and is supported by the surviving parent. If the surviving parent dies,  
 23 the benefits shall be paid to the legal guardian of the child.

24 (e) If there is no surviving eligible child or spouse, and there is  
 25 proof satisfactory to the local board, subject to review in the manner  
 26 specified in section 13.1(b) of this chapter, that the parent was wholly  
 27 dependent on the fund member, the member's surviving parent is  
 28 entitled, or both surviving parents if qualified are entitled jointly, to  
 29 receive fifty percent (50%) of the fund member's monthly benefit  
 30 during the parent's or parents' lifetime.

31 (f) If the fund member did not have at least twenty (20) years of  
 32 service or was not at least fifty-two (52) years old, the benefit is  
 33 computed as if the member:

34 (1) did have twenty (20) years of service; and

35 (2) was fifty-two (52) years of age.

36 (g) For purposes of this section, "dies in the line of duty" means  
 37 death that occurs as a direct result of personal injury or illness resulting  
 38 from:

39 (1) any action that the member, in the member's capacity as a  
 40 police officer:

41 (A) is obligated or authorized by rule, regulation, condition of  
 42 employment or service, or law to perform; or

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1 (B) performs in the course of controlling or reducing crime or  
 2 enforcing the criminal law; or

3 (2) any action that the member, in the member's capacity as a  
 4 firefighter:

5 (A) is obligated or authorized by rule, regulation, condition of  
 6 employment or service, or law to perform; or

7 (B) performs while on the scene of an emergency run  
 8 (including false alarms) or on the way to or from the scene.

9 **The term includes a presumed death incurred in the line of duty**  
 10 **under IC 5-10-13.**

11 SECTION 14. IC 36-8-10-15 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) The department  
 13 may establish and operate a disability benefit program for the payment  
 14 of disability expense reimbursement and pensions to disabled employee  
 15 beneficiaries. The department may provide these benefits by the  
 16 creation of a reserve account, by obtaining disability insurance  
 17 coverage, or both. However, the department may not establish or  
 18 modify a disability benefit program after June 30, 1989, without the  
 19 approval of the county fiscal body which shall not reduce or diminish  
 20 any disability benefits set forth in any disability program that was in  
 21 effect on January 1, 1989.

22 (b) Benefits payable as a result of line of duty activities, **including**  
 23 **a presumed disability incurred in the line of duty under IC 5-10-13,**  
 24 must be in reasonable amounts. Monthly benefits payable as a result of  
 25 other activities may not exceed the amount of pension to which that  
 26 employee beneficiary employed until normal retirement age would  
 27 have been entitled.

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